

IN THE SUPREME COURT OF THE STATE OF ALASKA

RESOURCE DEVELOPMENT COUNCIL)
FOR ALASKA, INC.; ALASKA TRUCKING)
ASSOCIATION, INC.; ALASKA MINERS)
ASSOCIATION, INC.; ASSOCIATED)
GENERAL CONTRACTORS OF ALASKA;)
ALASKA CHAMBER; ALASKA SUPPORT) Supreme Court Nos. S-17834/S-17843
INDUSTRY ALLIANCE,)
)

Appellants and Cross-Appellees,)

v.)
)

KEVIN MEYER, in his official capacity)
as Lt. Governor of the State of Alaska;)
GAIL FENUMIAI, in her capacity as Director)
of the Alaska Division of Elections; the)
STATE OF ALASKA, DIVISION OF)
ELECTIONS;)
)

Appellees,)

v.)
)

VOTE YES FOR ALASKA'S FAIR SHARE,)
)

Appellee and Cross-Appellant.)
)

Trial Court Case No. 3AN-20-05901CI

**FAIR SHARE'S OPPOSITION TO APPELLANTS' MOTION
TO UNSEAL SUMMARY JUDGMENT BRIEFING**

Appellee/Cross-Appellant Vote Yes for Alaska's Fair Share ("Fair Share"), by and through its counsel, Brena, Bell & Walker, P.C., hereby opposes the Appellants' Motion to Unseal Summary Judgment Briefing, dated August 3, 2020 ("Motion"). The summary judgment briefing that Appellants seek to unseal has been held by the superior court to be moot, along with Appellants' motion below to unseal such briefing, which was still pending before

FAIR SHARE'S OPPOSITION TO MOTION TO UNSEAL
RDC v. Meyer, Supreme Court Nos. S-17834/S-17843

August 10, 2020
Page 1 of 5

the superior court when Appellants filed this Motion.¹ Additionally, the subject summary judgment briefing is not on appeal before this Court and is not relevant to this proceeding. The Appellants' allegations regarding Fair Share's payments were accepted for purposes of the dispositive motions, and the amounts of Fair Share's payments are already a matter of public record with the Alaska Public Offices Commission. It cannot be the case that the opponents of an initiative campaign can use expedited litigation to pry into the initiative sponsors' private documents, then make those documents public simply by attaching them to court filings even when they have failed to state a claim upon which relief may be granted, their motion for summary judgment (containing the confidential documents) has been deemed moot, and their court action has been dismissed. Such bootstrapping should not be permitted.

The superior court found Appellants' sealed summary judgment briefing moot, and has likewise found Appellant's motion to unseal such briefing moot. Until this Court decides that the superior court's order dismissing Appellants' claims was erroneous, there is simply no basis for unsealing Fair Share's private contracts duly designated under the Protective Order stipulated to by all parties. If those contracts become relevant to a court decision in the future, the matter can be addressed at that time, but frankly Fair Share views Appellants' new motion

¹ Order Regarding Motion to Dismiss and Motions for Summary Judgment, July 16, 2020, at 30. [Exc. 256] ("Because of the Court's rulings above, Plaintiffs' July 6, 2020, Motion for Summary Judgment is now Moot."); Order Regarding Motion to Unseal, Aug. 5, 2020 at 1-2, a copy of which is attached as Exhibit A. ("[B]ecause the July 6 Motion for Summary Judgment has been ruled moot, the Motion to Unseal is now also moot.")

in the midst of expedited briefing as just more needless harassment with no relation to the merits or outcome of this appeal.

Appellants used the expedited nature of this litigation to receive discovery before the superior court had decided whether they had stated a proper claim. Fair Share did not agree that Appellants were entitled to any discovery below prior to a determination that they had stated a claim on which relief may be granted, but complied with the superior court's order in good faith and produced responsive discovery as required. In doing so, the parties stipulated to, and the superior court entered, a Protective Order allowing documents to be designated confidential if the producing party "believes in good faith reveals sensitive, proprietary, *contractual*, or otherwise confidential information that is trade secret or other confidential research, development, or commercial information that is entitled to protective treatment" and "confidential, private, or personal information relating to any individual or entity that the producing party *would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence.*" Protective Order (June 25, 2020) (emphasis added) [See R. 000156-000167]. As shown in Appellants' sealed exhibits, Fair Share and third-party Advanced Micro Targeting, Inc. ("AMT"), both availed themselves of this designation in producing documents to Appellants, who apparently agreed to the Protective Order under the belief they could immediately nullify it simply by attaching discovery to their motion, but the Protective Order provides a process by which the parties are to attempt to resolve the matter in good faith prior to bringing it before the court. *Id.* at ¶ 6. Appellants disregarded this process

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without any basis for doing so and disregarded the superior court orders holding Appellants' motion for summary judgment and Appellants' motion to unseal below to be moot.

CONCLUSION

Appellants have not shown any compelling reason why these contracts must be made public, nor have they asserted any relationship between the matters at issue in this appeal and the summary judgment briefing that has been sealed under the superior court's Protective Order. Rather they have attached these contracts to a court filing to argue they must be made public *because* they are attached to a court filing. The superior court has dismissed Appellants' complaint, and held the Appellants' motion to unseal below to be moot. Significantly, the Vote Yes motion for summary judgment was held to be moot by the superior court and that ruling has not been appealed to this Court. The pending appeals before this Court can proceed without granting the Motion, and this Court's decision will resolve whether Appellants stated a proper claim that would entitle them to discovery. There will be no harm to the public by awaiting this Court's decision prior to the printing of ballots in September. Fair Share therefore respectfully asks this Court to deny the Motion and allow the superior court to address this issue at a later date if necessary.

RESPECTFULLY SUBMITTED this 10th day of August, 2020.

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Fair Share

By //s// Robin O. Brena
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Certificate of Typeface and Service

I hereby certify that this document was
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(2) served by e-mail upon the following on August 10, 2020:

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

RESOURCE DEVELOPMENT COUNCIL)
FOR ALASKA, INC.; ALASKA TRUCKING)
ASSOCIATION, INC.; ALASKA MINERS)
ASSOCIATION, INC.; ASSOCIATED)
GENERAL CONTRACTORS OF ALASKA;)
ALASKA CHAMBER; and ALASKA)
SUPPORT INDUSTRY ALLIANCE,)

Plaintiffs,)
v.)

KEVIN MEYER, in his official capacity as)
Lt. Governor of the State of Alaska;)
GAIL FENUMIAI, in her capacity as Director)
Of the Alaska Division of Elections; the)
STATE OF ALASKA,)
DIVISION OF ELECTIONS;)
and VOTE YES FOR ALASKA'S FAIR)
SHARE,)

Defendants.)
_____)

Case No. 3AN-20-05901CI

ORDER REGARDING MOTION TO UNSEAL

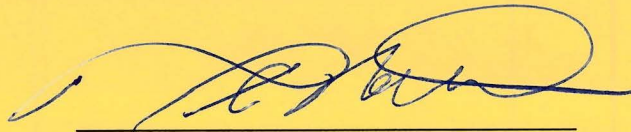
Before the Court is Plaintiffs' *Motion to Unseal Plaintiffs' Motion for Summary Judgment Dated July 6, 2020 and all Exhibits*. On July 16, 2020, the Court issued an Order in part ruling that the *Motion for Summary Judgment* filed on July 6 was moot. The case has since been appealed to the Alaska Supreme Court.

The *Motion to Unseal* requests the Court to unseal the *Motion for Summary Judgment* filed on July 6, 2020 and the exhibits attached to it. Although this Court recognizes the situation depends on the resolution of the appeal, because the July 6

Motion for Summary Judgment has been ruled moot, the *Motion to Unseal* is now also moot.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 5th day of August, 2020.



Thomas A. Matthews
Superior Court Judge

I certify that on 8/5/20 a copy of this
Order was emailed to:

M. Singer / L. Baxter / M. Paton-Walsh
R. Brena / J. Wakeland

Judicial Assistant